CHAPTER IX.

GOVERNMENT CONTROL OVER PRIVATE FORESTS IN CERTAIN CASES.

SECTION I.—THE INDIAN LAW.

§ 1.—*The Principle involved.*

It is a generally admitted principle of law that when some public interest is involved, or a public danger is imminent, private rights must give way to such limited extent as may be necessary.

It is on this principle that the law for the "Acquisition of land for public purposes" is based.

In the case of private forests, however, it is often sufficient to prevent their being totally cleared off and cut down, and to enforce their being worked in a conservative manner, without expropriating the estate altogether, or depriving the owner of the whole enjoyment of his property.

The interference in such cases may be very limited and therefore no compensation at all, or only a limited compensation, may be necessary.

§ 2.—*Popular Ignorance on the subject.*

It is sometimes objected by persons ill-informed about forest matters, that what are popularly (but not very accurately) called the "climatic influences of forests" are visionary and not established on a sound basis of proved experience.

It is true that the precise effect of forests (and still more so the precise extent of forest which has any effect) in increasing the rainfall is not yet completely known; but there are many other effects of forests which are not in the least doubtful, and these must not be overlooked, or confused with others that may be so.

The details of such cases of forest influence, and the full proof of its efficacy, cannot be set forth in a Manual of Forest law; but

from a legal point of view the fact (which I shall presently prove) that these effects of forests are admitted to be true and are accepted as a valid ground for interference, in the laws of *every one* of the European countries in which forests exist, ought certainly to be admitted as a proof that in India it is right, in some cases, for Government to interfere to prevent the destruction of even purely private forests, on such grounds.

§ 3.—*Indian Law Provisions.*

Chapter VI of the Indian Forest Act deals with this subject. There is no necessity in Burma for such provisions, the Act therefore omits them : all forest on hill ranges, &c., is there at the disposal of Government. Section 35 enables Government to interfere with *any* forest or waste land (no matter whose it is), so far as to prevent its 'devastation.' It will be found, practically, that to effect this object it is necessary to prevent—

(*a*) the total clearing of the land so that it ceases to be forest;

(*b*) burning or cutting down wholesale the surface growth, even when it cannot be called 'forest;'

(*c*) the excessive pasturing of cattle, whereby either existing forest is endangered, or if (as is usually the case where this section has to be applied) the forest has already disappeared, but the restoration of the growth of grass, trees, and herbaceous vegetation is prevented.

According to the circumstances of the case, it may be necessary either absolutely to *prohibit* such acts, or simply to *regulate* the process.

The circumstances under which this interference is allowed are stated in the Act, and the local Government is left to judge that the interference is necessary; not, however, without giving the forest owner a chance of being heard, as I shall presently explain.

§ 4.—*Explanation of the dangers which arise from forest denudation.*

Before proceeding to deal with the terms of the Indian law, it may be well to call the student's attention to the circumstances

under which the law can be called into operation. I will exhibit three circumstances in a classified order, which will, I hope, enable him to understand and to remember what they are :—

I.—Dangers affecting the soil in mountain countries—

(*a*) To prevent soil being wasted or cut away by the rain, and the formation of water channels, ravines, and torrents on ridges, or slopes, and in mountain valleys ;

(*b*) To prevent falling of rock and rolling stones ;

(*c*) To prevent avalanches or masses of snow sliding down steep declivities ;

(*d*) To protect against wind and storms.

N.B.—The débris and materials borne down as the result of any of these catastrophes may block roads, destroy buildings and bridges, cover culturable land, and so forth, as well as block up streams, causing disastrous floods.

II.—Dangers to water-supply—

(*a*) To maintain the supply in springs, rivers, and tanks ;

(*b*) To regulate the periodical filling of tanks, &c ;

(*c*) To maintain an equable discharge of water into streams and rivers, preventing sudden rises of the water-level by the violent discharge of mountain streams and feeders into rivers, causing consequent floods which may extend far away into the plain country.

N.B.—The breaking of the violence with which rain falls on the surface is a most important effect of forests, but this discharge, if violent and unexpected, produces the calamities mentioned under I.

III.—Danger to public health and convenience—

(*a*) Prevent spread of malaria over marshy places, &c.[5]

IV.—Danger (chiefly in the plains) to land, houses, &c.—

(*a*) To protect against floods ;

(*b*) Against hot winds and storms ;

(*c*) Spreading and shifting sands.

[5] It is obvious that under this head we may gradually go on step by step to cases where merely general amenity and sense of comfort are concerned : as where a country is generally denuded of its trees, it becomes unpleasant to live in and the climate is more apt to be extreme. Our Indian law does not attempt to go beyond cases of distinct and actual danger.

§ 5.—*Procedure under the Act.*

The procedure in cases where it is necessary to prevent the clearing or devastation of private forests, which would involve any of these dangers, is first of all to issue a notice calling on the forest owner to show cause (within a reasonable time fixed in the notice) why the notification declaring the necessity of the case and the particular remedy required, should not issue.

No question, it will be observed, arises whether the land is forest or not; it may be timber forest, or a tract covered only with brushwood, herbage, or grass, and yet it may have the desired effect[6].

The objections and evidence in support of them (if any) offered by the owner are heard by an officer specially appointed, who records his opinion, which is then 'considered' by the local Government.

Supposing the local Government to decide against the objection (or that no objection is offered), then a *notification* is issued in the Gazette *specifying* the *limits* of the tract and *declaring* the *prohibitions, regulations,* &c., that are called for. This of course will be drawn up with the advice of a forest officer.

§ 6.—*Mere Protection may not suffice.*

It will often happen that mere prohibitions are not enough,—actual planting works, fencing, levelling of soil, erecting weirs across ravines, and other appliances familiar to students of reboisement works, are necessary. Such works may be constructed or carried out, but always at the expense of Government.

§ 7.—*Further Steps, when Owner is negligent, &c.*

It may happen also—

(1) that the regulations are either neglected or disobeyed;

(2) that the works cannot be properly successful without bringing the area under the complete control of the Forest Department.

[6] I need hardly remind the reader that in some cases land solidly turfed is just as good a protection as forest, or at any rate is in itself sufficient in the absence of a denser clothing. There are many places in the Alps where danger is averted simply by "regazonnement," or growing turf or herbage on the ground.